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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

LEAGUE OF CONSERVATION VOTERS, et al.,)	
)	
Plaintiffs,)	Case No. 3:17-cv-00101-SLG
)	
v.)	
)	
DONALD J. TRUMP, et al.,)	
)	
Defendants.)	
_____)	

**DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

On April 28, 2017, President Donald J. Trump issued the Executive Order Implementing an America-First Offshore Energy Strategy, citing his authority under the "Constitution and the laws of the United States of America, including the Outer Continental Shelf Lands Act, 43 U.S.C. [§] 1331 *et seq.*" ("OCSLA") and finding that "[i]ncreased domestic energy production on Federal lands and waters strengthens the Nation's security and reduces reliance on imported

energy." Exec. Order No. 13795, 82 Fed. Reg. 20815 (Apr. 28, 2017) (ECF No. 13-1).

Consistent with this policy, the President modified President Barack H. Obama's prior withdrawals of certain areas of the Outer Continental Shelf ("OCS") from oil, gas, and other mineral leasing, allowing the Secretary of the Interior to include such areas for consideration in any future leasing program. *Id.* § 5. Plaintiffs challenge this Executive Order, claiming it is an improper exercise of the President's authority under the governing statutes and the U.S. Constitution. Defendants are entitled to summary judgment under Federal Rule of Civil Procedure 56. In addition, Plaintiffs' motion for summary judgment should be denied.

As a threshold matter, Plaintiffs have failed to demonstrate standing. The harm they allege cannot be redressed by the relief they seek. Geological and geophysical surveys can and do occur even in withdrawn areas; therefore, declaring Executive Order 13795 invalid would not address or prevent the harm of which they complain. Moreover, the harm they allege to be attributable to potential leases made possible by the Executive Order is not imminent.

In any event, Plaintiffs' claims have no merit. President Trump lawfully exercised his authority under the U.S. Constitution and OCSLA to modify President Obama's prior withdrawal, allowing certain areas to again be *considered* for oil and gas leasing. Nothing in OCSLA suggests permanency or irrevocability of Presidential withdrawals, nor does OCSLA restrict the exercise of the President's constitutional and statutory authority to modify a prior withdrawal. Indeed, no President exercising withdrawal authority has done so consistent with Plaintiff's theory of permanent and irreversible withdrawal power. To the contrary, Presidents have modified withdrawals on at least three occasions – a practice in which Congress has acquiesced. Contrary to this established practice, Plaintiffs advance a novel and sweeping legal theory under which a President could withdraw the entire Outer Continental Shelf from leasing

and thereafter that President, and every subsequent President, would be powerless to implement federal offshore leasing absent an Act of Congress. Apart from encroaching on the President's Constitutional responsibility to provide for national security, Plaintiffs' theory has no support in the text or legislative history of OCSLA, and would undermine the Act's purpose to make the minerals of the continental shelf available for exploration and development.

For these reasons and as set forth more fully in the accompanying Memorandum in Support, the Defendants respectfully move this Court to grant them summary judgment on all of Plaintiffs' claims for relief and to deny Plaintiffs' Motion for Summary Judgment.

Dated: July 18, 2018

Respectfully submitted,

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Certificate of Service

I hereby certify that on July 18, 2018, I filed the foregoing with the Clerk of Court using the CM/ECF system, which will provide service to all attorneys of record.

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